

VZCZCXYZ0004  
PP RUEHWEB

DE RUEHBU #1101/01 2752201  
ZNY CCCCC ZZH  
P 022201Z OCT 09 (CCY ADBF6F53 MSI7006-632)  
FM AMEMBASSY BUENOS AIRES  
TO RUEHC/SECSTATE WASHDC PRIORITY 4430  
INFO RUCNMER/MERCOSUR COLLECTIVE PRIORITY  
RUCPDO/DEPT OF COMMERCE WASHINGTON DC PRIORITY  
RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC PRIORITY  
RUEAIIA/CIA WASHINGTON DC PRIORITY

C O N F I D E N T I A L BUENOS AIRES 001101

SIPDIS

PASS TO: EEB/CIP/BA TFINTON  
PASS TO: EEB/TPP/MTA/MST CHENNINGER  
PASS TO: USTR FOR KKALUTKIEWICZ  
C O R R E C T E D C O P Y - CHANGED DECL DATE

E.O. 12958: DECL: 10/03/2039  
TAGS: [PGOV](#) [ECON](#) [ETRD](#) [EINT](#) [EINV](#) [WTRO](#) [AR](#)  
SUBJECT: ARGENTINA: A PRIMER ON ARGENTINA'S MEDIA BILL

REF: A. BUENOS AIRES 350 AND PREVIOUS  
[1](#)B. BUENOS AIRES 1008  
[1](#)C. 08 BUENOS AIRES 980 AND PREVIOUS

Classified By: DCM Tom Kelly for reasons 1.4 (b) & (d).

[1](#)1. (C) Summary: For decades, there has been consensus within Argentine political circles of the need to reform the 1980 media law, which dates to the military dictatorship (1976-1983). A year after President Cristina Fernandez de Kirchner (CFK) first announced an effort at reform, the Chamber of Deputies approved a bill. Although many speculate that the bill responds to CFK's political objectives by potentially diminishing the holdings of Clarin Media Group, the bill could not have succeeded without general support for reducing the concentration of media ownership. The government secured center-left support through modifications which addressed fears that it would create a monopoly provider of cable TV services. The draft law proposes regulatory changes in three key areas: ownership of mass communication channels, requirements for on-air content, and regulatory oversight. U.S. cable programmers are among those concerned about the law, and the Mission is trying to work behind the scenes to get them access to GOA decision-makers so that they can make their case.

[1](#)2. (C) The bill moved to the Senate on September 21, where the government hopes to secure approval by early-to-mid October. The government would like to avoid modifications so that the bill does not have to return to the Lower House for approval. Behind the hurry is the fact that the government will lose its majority in both houses in December when the new members elected on June 28 finally take up their seats. Although public criticism of controversial articles from at least six ruling party Senators seemed initially to point to modifications, that resistance may be fading. CFK and her very hands-on husband, former President Nestor Kirchner, may still get a law of their design by December. End Summary.

Background to Reform

[1](#)3. (C) For decades, there has been consensus within Argentine political circles of the need to reform the 1980 media law, which dates to the military dictatorship (1976-1983). President Cristina Fernandez de Kirchner (CFK), who first announced an effort at reform in late 2008, publicly presented the draft audiovisual law in March 2009 (ref A). The Chamber of Deputies approved the bill after more than 12 hours of debate on September 17 (147 votes in favor, 4 against, 1 abstention, and over 100 deputies walking out before the vote in protest of what they characterized as

procedural irregularities and undo haste). While most acknowledge that Argentine audiovisual regulation is in need of reform, many speculate that the bill responds to the political objectives of CFK and her husband, former President Nestor Kirchner (NK), by potentially diminishing the holdings of the Clarin Media Group, whose many outlets are seen as critical of the government. Ruling Victory Front (FpV) deputy Manual Baladron publicly framed this initiative as "a battle between the politicians and media corporations."

#### CFK Defends the Bill

-----

¶4. (SBU) Following the Lower House vote, CFK publicly defended the initiative during her September 20-24 visit to New York to attend the United Nations General Assembly. During a speech to Columbia University students, CFK described the initiative as "profoundly decentralizing," inspired by U.S. laws that regulate media activity, and the product not of government initiative but of civil society advocacy. In a reference to Clarin Media Group, she added "73% of the radio, television, and cable licenses in Argentina belong to one single entity, which also owns newspapers."

#### Consequences to Clarin

-----

¶5. (SBU) Under the provisions of the bill, Clarin Media Group, which by objective estimates controls about 46% of the national cable market and owns both cable and broadcast channels, may be forced to divest itself of a substantial part of its media empire. While Clarin is the major player in local media, it is by no means a monopoly. Clarin has

about 23% of the Buenos Aires radio market behind Radio 10, with 34%. In television, Clarin lags Telefe, which enjoys a market-leading 39% of the audience share, while Clarin's Canal 13 has the second largest share (28% of the audience). And while Clarin does have nearly half the cable market, it only provides 10% of the content. Nevertheless, there is no doubt that Clarin, which according to its own reckoning stands to lose 236 of 264 media licenses, is CFK's target.

#### Center-Left Support Secures Bill's Approval

-----

¶6. (C) Despite the Kirchners' barely disguised political objectives, the bill could not have succeeded without general support for reducing the concentration of media ownership. The government secured support from center-left deputies outside their coalition, including nine out of ten Socialist representatives. This was critical to the bill's Lower House approval. Just two days prior to the vote, the government wooed center-left votes by eliminating a provision allowing telephone companies into the cable market. This addressed concerns on the left about potentially creating a monopoly provider. Santa Fe Senator and possible 2011 presidential contender Carlos Reutemann (ref B) publicly accused the Socialist party ) and his Santa Fe rival, Socialist Governor Hermes Binner -- of serving the interests of the national government by supporting the media law and described them as "true allies of Kirchnerism." (The charges did not seem to hurt Binner -- soon thereafter, his forces prevailed over Reutemann's in Santa Fe province's municipal elections on September 27.)

#### Scores of Opposition Deputies Refused to Vote

-----

¶7. (SBU) Prior to consideration in the Chamber of Deputies, Vice President Julio Cobos, Buenos Aires Mayor Mauricio Macri, deputies-elect Francisco de Narvaez and Gabriela Michetti, and Radical party leaders met publicly to block the legislation, criticizing in particular a number of articles. Opposition deputies criticized the administration's rush to move the bill before the new Congress convenes in December. In addition, they said the

debate was void because the ruling party had failed to comply with congressional procedures. Over 100 deputies from the Radical, Republican Proposal, Civic Coalition, and Peronist dissident sectors left the floor in protest of the vote. Leading papers "La Nacion" and "Clarín" asserted that in walking out on the vote, the opposition missed an opportunity to kill the "forced sale" article, one of the more controversial points requiring companies to divest themselves within one year of licenses in excess of ten.

¶8. (SBU) The day after the vote, Radical Deputy and chair of the Freedom of Expression Committee Silvana Giudici and Civic Coalition deputy Patricia Bullrich held a press conference charging that ruling party officials had surreptitiously modified at least three articles between committee hearings and the vote.

#### Highlights of the Bill's Provisions

-----

¶9. (SBU) Most observers agree that the current antiquated media law needs an overhaul. The statute, drafted under a military dictatorship, regulates mass media without reference to satellite, cable, internet technology or the internationalization of the mass media over the past 30 years. The draft law seeks to make regulatory changes in three key areas: ownership of mass communication channels considered as a whole, content, and regulatory oversight.

#### Ownership

-----

¶10. (SBU) Proposed rules would severely limit concentrated ownership of audiovisual media. Foreign ownership of any company with a media license would be limited to 30%, and no company could possess more than ten licenses for all audiovisual media. Furthermore, cable distributors would be prevented from owning broadcast licenses. National programmers, those with over 60% local content, would receive preferential treatment under the law. The law would divide the broadcast spectrum into three equal parts: private enterprise, social organizations, and the State, and the latter two sectors would presumably pick up licenses after

the private owners divested. Those companies in violation of the ownership rules would have one year to comply with the law; any company that does not divest itself of licenses in excess of ten within that time would be forced to sell its interest. Owners, understandably, fear that forced divestiture would be at fire-sale prices. While owners may rightly fear a forced sale procedure, the applicable section of the law is vague and seems to leave considerable discretion with the regulator.

#### Content and Regulatory Oversight

-----

¶11. (SBU) The draft statute also establishes local content and other programming and advertising limitations. The law requires a minimum amount of Argentine content, although the precise level may depend on the channel's programming format.

For example, Section 58 of the law establishes a screen quota for national movies, requiring foreign programmers that transmit more than 50% of fictional feature-length films to spend 0.5% of their annual revenue to acquire and transmit local Argentine films.

¶12. (C) The law, if enacted, would be administered by an autonomous board. The current regulator, the Federal Broadcasting Committee (known by the acronym COMFER in Spanish), would be superseded by a panel composed of two presidential appointees, three congressional appointees (one pro-government and two opposition appointees), and two named by a committee of provincial leaders. Each member would serve a four-year term. It is thought by many observers that the Kirchner government would gain control of the board under this distribution.

## Foreign Companies' Reaction

---

¶13. (SBU) The foreign players in the Argentine media market, including many big American cable programmers, find several aspects of the proposed legislation worrisome. According to the Television Association of Programmers (TAP), advertising restrictions are the most troubling because they could, potentially, destroy the profitability of what is considered the largest pay television market in Latin America. In addition to advertising limits, foreign media companies are most concerned by content regulation and tax consequences of the draft law. During CFK's September 22 meeting with businesspersons in New York, a Fox International Channels representative voiced the concerns of his peers by asking that foreign companies not be discriminated against in the competition against Argentine companies. CFK expressed interest in this viewpoint and offered to follow up. The Embassy is in the process of discussing this commitment with Casa Rosada staff and trying to hold them to the President's verbal commitment.

¶14. (SBU) Advertising would be regulated and limited under the provisions of the draft law. The bill would reduce the current standard 12 minutes per hour of advertising to six. Foreign media companies warn that this would increase prices of content to cable operators and other platforms. Argentina, TAP claims, has the most affordable basic subscription fee in Latin America, allowing for over 70 cable channels providing consumers a wide range of entertainment. For foreign companies to profit under the new rules, they would have to raise subscription rates, which they fear the government would block. Otherwise, they may be forced to abandon the market. It also restricts foreign advertising, a key element of the international pay television business, which depends upon pan-regional and even global retransmission of its programming and advertising.

¶15. (SBU) Content regulation would be a significant feature of the law and one that concerns most foreign players. Cable operators may not broadcast the content of foreign programmers that are not registered in Argentina. Of the U.S. media groups, HBO and Discovery have not established operations in Argentina, and they fear that failure to maintain a local domicile would disallow retransmission of their content over the local airwaves. DirecTV and TAP also point out that the law would create a dangerous framework under which pay TV stations could be regulated in the same way public utilities are regulated. Content could be "nationalized" and companies like DirecTV could be forced to carry local stations on their satellite network-an expensive and difficult requirement.

¶16. (SBU) Potential tax consequences are also causing foreign companies heartburn. All programmers are subject to a new tax proportional to the amount of their gross invoicing for advertising. The applicable rate is higher for foreign programmers.

### Up Next: the Senate Vote

---

¶17. (C) The bill advanced to the Senate on September 21, where the government initially hoped to obtain a speedy approval, without any modifications, by October 7. The Kirchners are resistant in particular to modifications to two articles, described by the press as the "heart" of the bill and "not-negotiable" to the First Couple. Six ruling party Senators have called for changes to these two articles known as the forced sale article (161) and the regulator article (14). Key among this group is Peronist Senator Guillermo Jenefes from Jujuy province, who chairs the Systems, Mass Media and Freedom of Expression committee, and belongs to two of the other three committees that are studying this bill. (Note: Jenefes' in-laws own a multimedia company, and he has served on the board of television company Telefe.) These Senators have argued that article 161 is "unconstitutional" by violating property rights and that article 14 gives the

Executive Branch too much authority to renew and revoke media licenses.

¶18. (C) In response, the Kirchners have pressed Peronist senators and governors to ensure that not a single article is modified, which would require the bill to return to the Lower House for approval. CFK herself reportedly called from New York to repeat the directive to FpV bloc leader Miguel Pichetto and tried unsuccessfully to reach Senator Jeneffes by phone from the U.S. Once she returned to Argentina, the pressure increased with promises to senators in exchange for their votes, according to "La Nacion."

¶19. (C) The pressures or inducements appear to have worked. On October 2, Senators on the four committees studying the bill, including Senator Jeneffes who previously said that it was "very probable the Senate would introduce changes," signed the bill without modifications, according to local press. After initial press reports that the government was shy Senate votes regarding the two most controversial articles, the government can now count on 38 votes to pass the bill, according to "La Nacion." They would need 37 senators for a quorum to get to a vote. After voting the bill out of committees, the government plans to send the bill to the floor for a vote on October 9. A number of well-informed observers across the political spectrum, including former Kirchner Chief of Cabinet Alberto Fernandez and influential conservative columnist Joaquin Morales Sola, told the DCM October 2 that the bill is likely to make it through the Senate relatively unscathed.

#### Limited Public Reaction

¶20. (SBU) Despite intense press coverage (especially in "Clarín" which is devoting pages and pages to the debate), the bill has not fueled public interest on par with the government's extended conflict with the farm sector in 2008 (ref C). (Alberto Fernandez told the DCM, "The man on the street could care less.") The first public protests occurred September 21 and 22 among a few hundred residents of upper-class neighborhoods in Buenos Aires City.

#### Comment

¶21. (C) While critical media coverage of Lower House opposition deputies walking out on the vote set the tone for a Senate showdown, it appears that the end result will be the same. Senator Jeneffes' willingness to play ball with the Kirchners opens the way for passage. Government supporters and some opponents will interpret success on the measure as confirmation that the Kirchners have regained political momentum despite their electoral defeat in the June midterms.

In our view, that is an overstatement, and the media bill could turn out to be one of the Kirchners' last hurrahs. Even after the bill passes the Senate, it is likely to become enmeshed in interminable court challenges. Morales Sola told the DCM that he and other critics of the law hope that it emerges from the Senate "as ugly (i.e., unreformed) as

possible, so that the challenges in the court are easier." Further into the future, either the new Congress or more likely the government that replaces the Kirchners in 2011 will scrap the law and try again.

MARTINEZ